

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ONEBEACON AMERICA INSURANCE  
COMPANY,  
Plaintiff,

CIVIL ACTION  
NO: 04-11753-JLT

vs.

BLUE WATER ENTERPRISES, INC.  
Defendant.

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

Now comes the plaintiff, OneBeacon America Insurance Company, in the above-entitled action, by and through its undersigned attorneys, Clinton & Muzyka, P.C., and respectfully moves this Honorable Court for an Order requiring the defendant to pay the attorney's fees incurred by the plaintiff as a result of the March 30, 2006 Contempt Hearing. The plaintiff further moves for an Order requiring the defendant to satisfy the Umpire's costs and fees associated with his attendance at the Contempt Hearing.

As grounds in support of this motion, the plaintiff submits the following for the Court's consideration.

BACKGROUND

On March 24, 2006, the Court scheduled a Contempt Hearing *sua sponte* for March 30, 2006. The purpose of the Contempt Hearing, according to plaintiff counsel's

understanding, was to determine whether the defendant or its counsel violated the Order issued by the Court following the March 7, 2006 Status Conference. Because defense counsel is not registered to receive electronic notices as required by the Local Rules, Ms. Zita Lovett provided Attorney Duffy with notice of the Contempt Hearing via regular mail.

Attorney Duffy received notice of the Contempt Hearing on March 27, 2006, which he confirmed in a letter that he filed with the Court on March 28, 2006. This letter states, in part, **"I am in receipt of the mailed Docket Report with Notice of Hearing set for March 30, 2006 in the above-referenced matter."**<sup>1</sup> Despite receiving notice of the Contempt Hearing, Attorney Duffy failed to appear. As a result of his inexcusable absence, the plaintiff has incurred unnecessary attorney's fees, which should properly be borne by the defendant or Attorney Duffy.

Additionally, the defendant should also be responsible for the plaintiff's attorney's fees and costs associated with the preparation and filing of this motion, as well as the fees and costs associated with the Umpire's attendance at the Contempt Hearing. It should be noted

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<sup>1</sup> Document Number: 26 on the Docket.

that the Umpire, James Simonitsch, traveled from Maine earlier that morning to attend the 10:30 a.m. Contempt Hearing.

#### ARGUMENT

Defense counsel has not provided an explanation for his absence, even though the Court issued an Order to show cause on March 30, 2006. Nevertheless, Attorney Duffy's failure to appear is consistent with the pattern of behavior and attitude he has exhibited in this case. For instance, on two (2) separate occasion plaintiff's counsel had to request a Status Conference because Attorney Duffy repeatedly failed to respond to his inquiries. The first Status Conference (February 23, 2005) was canceled by agreement. Attorney Duffy failed to appear for the second Status Conference (August 4, 2006).

Additionally, following the March 7, 2006 Status Conference the Court issued an Order requiring the defendant to produce a copy of the Settlement Agreement that was "discussed in open court by March 10, 2006." It was only after plaintiff's counsel sent a facsimile to the defendant pursuant to Rule 37 of the Federal Rules of Civil Procedure that Attorney Duffy produced the Settlement Agreement & Release as ordered. Despite the deadline contained in the Court's Order, Attorney Duffy

did not produce the Settlement Agreement & Release until March 27, 2006. Attorney Duffy does not even comply with Court Orders timely, which is further demonstrated by his ongoing failure to show cause.

**WHEREFORE**, the defendant, OneBeacon America Insurance Company, prays that this Honorable Court:

- (1) Enter an Order requiring the defendant to pay the plaintiff the sum of \$1,006.50, which represents the attorney's fees it incurred in connection with the Contempt Hearing (\$577.50) and preparation of this Motion (\$429.00), and;
- (2) Enter an Order requiring the defendant to pay the Umpire \$990.75, which represents his fees and costs associated with his attendance at the Contempt Hearing.<sup>2</sup>

By its attorneys,

**CLINTON & MUZYKA, P.C.**

"/s/Kenneth M. Chiarello"  
Kenneth M. Chiarello  
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Dated: April 6, 2006

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<sup>2</sup> Attached hereto as Exhibit "A" is a correspondence from the Umpire that sets forth his fees and costs associated with his attendance at the Contempt Hearing.